

Introduced by Senator Leno

February 27, 2015

An act to add Sections 10295.35, 10421.5, and 10427 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 703, as introduced, Leno. Public contracts: prohibitions: discrimination.

Existing law authorizes state agencies to enter into contracts for the acquisition of goods or services upon approval by the Department of General Services. Existing law sets forth various requirements and prohibitions for those contracts, including, but not limited to, a prohibition on entering into contracts for the acquisition of goods or services of \$100,000 or more with a contractor that discriminates between spouses and domestic partners or same-sex and different-sex couples in the provision of benefits. Existing law provides that a contract entered into in violation of those requirements and prohibitions is void and authorizes the state or any person acting on behalf of the state to bring a civil action seeking a determination that a contract is in violation and therefore void. Under existing law, a willful violation of those requirements and prohibitions is a misdemeanor.

This bill would also prohibit a state agency from entering into contracts for the acquisition of goods or services of \$100,000 or more with a contractor that discriminates between employees on the basis of gender identity in the provision of benefits, as specified. The bill would require the department to maintain an easily accessible list on its Internet Web site of contracts for the acquisition of goods or services of \$100,000 or more entered into on or after January 1, 2016. The bill would authorize a person to file a complaint with the department alleging that

a contractor is in violation of, or a contract has been entered into in violation of, a state contracting requirement or prohibition and would require the department to investigate each complaint. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295.35 is added to the Public Contract
2 Code, to read:

3 10295.35. (a) (1) Notwithstanding any other law, a state
4 agency shall not enter into any contract for the acquisition of goods
5 or services in the amount of one hundred thousand dollars
6 (\$100,000) or more with a contractor that, in the provision of
7 benefits, discriminates between employees on the basis of an
8 employee's or dependent's actual or perceived gender identity,
9 including, but not limited to, the employee's or dependent's
10 identification as transgender.

11 (2) For purposes of this section, "contract" includes contracts
12 with a cumulative amount of one hundred thousand dollars
13 (\$100,000) or more per contractor in each fiscal year.

14 (3) For purposes of this section, an employee health plan is
15 discriminatory if the plan is not consistent with Section 1365.5 of
16 the Health and Safety Code and Section 10140 of the Insurance
17 Code.

18 (4) The requirements of this section shall apply only to those
19 portions of a contractor's operations that occur under any of the
20 following conditions:

21 (A) Within the state.

22 (B) On real property outside the state if the property is owned
23 by the state or if the state has a right to occupy the property, and
24 if the contractor's presence at that location is connected to a
25 contract with the state.

1 (C) Elsewhere in the United States where work related to a state
2 contract is being performed.

3 (b) Contractors shall treat as confidential, to the maximum extent
4 allowed by law or by the requirement of the contractor's insurance
5 provider, any request by an employee or applicant for employment
6 benefits or any documentation of eligibility for benefits submitted
7 by an employee or applicant for employment.

8 (c) After taking all reasonable measures to find a contractor that
9 complies with this section, as determined by the state agency, the
10 requirements of this section may be waived under any of the
11 following circumstances:

12 (1) There is only one prospective contractor willing to enter
13 into a specific contract with the state agency.

14 (2) The contract is necessary to respond to an emergency, as
15 determined by the state agency, that endangers the public health,
16 welfare, or safety, or the contract is necessary for the provision of
17 essential services, and no entity that complies with the requirements
18 of this section capable of responding to the emergency is
19 immediately available.

20 (3) The requirements of this section violate, or are inconsistent
21 with, the terms or conditions of a grant, subvention, or agreement,
22 if the agency has made a good faith attempt to change the terms
23 or conditions of any grant, subvention, or agreement to authorize
24 application of this section.

25 (4) The contractor is providing wholesale or bulk water, power,
26 or natural gas, the conveyance or transmission of the same, or
27 ancillary services, as required for assuring reliable services in
28 accordance with good utility practice, if the purchase of the same
29 cannot practically be accomplished through the standard
30 competitive bidding procedures and the contractor is not providing
31 direct retail services to end users.

32 (d) (1) A contractor shall not be deemed to discriminate in the
33 provision of benefits if the contractor, in providing the benefits,
34 pays the actual costs incurred in obtaining the benefit.

35 (2) If a contractor is unable to provide a certain benefit, despite
36 taking reasonable measures to do so, the contractor shall not be
37 deemed to discriminate in the provision of benefits.

38 (e) (1) Every contract subject to this chapter shall contain a
39 statement by which the contractor certifies that the contractor is
40 in compliance with this section.

1 (2) The department or other contracting agency shall enforce
2 this section pursuant to its existing enforcement powers.

3 (3) (A) If a contractor falsely certifies that it is in compliance
4 with this section, the contract with that contractor shall be subject
5 to Article 9 (commencing with Section 10420), unless, within a
6 time period specified by the department or other contracting
7 agency, the contractor provides to the department or agency proof
8 that it has complied, or is in the process of complying, with this
9 section.

10 (B) The application of the remedies or penalties contained in
11 Article 9 (commencing with Section 10420) to a contract subject
12 to this chapter shall not preclude the application of any existing
13 remedies otherwise available to the department or other contracting
14 agency under its existing enforcement powers.

15 (f) Nothing in this section is intended to regulate the contracting
16 practices of any local jurisdiction.

17 (g) This section shall be construed so as not to conflict with
18 applicable federal laws, rules, or regulations. In the event that a
19 court or agency of competent jurisdiction holds that federal law,
20 rule, or regulation invalidates any clause, sentence, paragraph, or
21 section of this code or the application thereof to any person or
22 circumstances, it is the intent of the state that the court or agency
23 sever that clause, sentence, paragraph, or section so that the
24 remainder of this section shall remain in effect.

25 SEC. 2. Section 10421.5 is added to the Public Contract Code,
26 to read:

27 10421.5. (a) Any person may file a complaint with the
28 department alleging that a contractor is in violation of, or a contract
29 or other transaction has been entered into in violation of, any
30 provision of this chapter.

31 (b) The department shall investigate any complaints it receives
32 pursuant to this section.

33 SEC. 3. Section 10427 is added to the Public Contract Code,
34 to read:

35 10427. The department shall maintain an easily accessible list
36 on the department's Internet Web site of contracts for the
37 acquisition of goods or services in the amount of one hundred
38 thousand dollars (\$100,000) or more that are entered into on or
39 after January 1, 2016.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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